



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

June 28, 2010

Memorandum for:

Deputy Commissioner, Trials

Re:

Sergeant Corey Dailey
Tax Registry No. 913758
Narcotics Borough Manhattan South
Disciplinary Case No. 83551/07

CHAN

Detective John Berberian
Tax Registry No. 921146
Quartermaster Section
Disciplinary Case No. 83488/07

The above named members of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on July 13, 2009 and were charged with the following:

DISCIPLINARY CASE NO. 83551/07

1. Said Sergeant Corey Dailey assigned to Manhattan South Downtown Narcotics District, while on-duty, on or about October 7, 2006, at a location known to this Department, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit, said Sergeant failed to make proper inquiries relating to an ongoing narcotics investigation that resulted in a search of a female, and failed to ensure the preparation of a UF-250 following said search.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT
PROHIBITED CONDUCT**

DISCIPLINARY CASE NO. 83488/07

1. Said Detective John Berberian assigned to Quartermaster Section, while on-duty, on or about October 7, 2006, at a location known to this Department, said officer did subject a person known to this Department to sexual contact by forcible compulsion, to wit, said officer inserted his fingers into the vagina and anus and touched the breast area of said person known to this Department.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT/PROHIBITED
CONDUCT / GENERAL REGULATIONS
N.Y.S. PENAL LAW 130.65(1) - SEXUAL ABUSE IN THE FIRST DEGREE**

**SERGEANT COREY DAILY
DETECTIVE JOHN BERBERIAN**

**DISCIPLINARY CASE NO. 83551/07
DISCIPLINARY CASE NO. 83488/07**

2. Said Detective John Berberian assigned to Quartermaster Section, while on-duty, on or about October 7, 2006, at a location known to this Department, said officer did subject a person known to this Department to sexual contact without the latter's consent, to wit, said officer inserted his fingers into the vagina and anus and touched the breast area of said person known to this Department

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT

PROHIBITED CONDUCT / GENERAL REGULATIONS

N.Y.S. PENAL LAW 130.55 - SEXUAL ABUSE IN THE THIRD DEGREE

3. Said Detective John Berberian assigned as indicated in Specification #1, while on-duty, on or about October 7, 2006, at a location known to this Department, said officer, while acting in concert with another Member of Service, did restrain a person known to this Department, to wit, said officer did prevent said person known to this Department from leaving a laundromat bathroom.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT

PROHIBITED CONDUCT / GENERAL REGULATIONS

N.Y.S. PENAL LAW 135.05 - UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE

4. Said Detective John Berberian assigned as indicated in Specification #1, while on-duty, on or about October 7, 2006, at a location known to this Department, said officer, while acting in concert with another Member of Service, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit, said officer did conduct an unlawful search of a person known to this Department.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT

PROHIBITED CONDUCT / GENERAL REGULATIONS

5. Said Detective John Berberian assigned as indicated in Specification #1, while on-duty, on or about October 7, 2006, at a location known to this Department, did fail and neglect to perform said officer's duties, to wit, said officer did conduct an unlawful search of a female known to this Department in that said officer failed to ensure that a female Member of Service was present during said search as directed by competent authority.

P.G. 203-05, Page 1, Paragraph 1

PERFORMANCE ON DUTY

GENERAL REGULATIONS

6. Said Detective John Berberian assigned as indicated in Specification #1, while on-duty, on or about October 7, 2006, at a location known to this Department, did fail and neglect to perform said officer's duties, to wit, said officer failed to prepare a UF-250 following a search of a female known to this Department as directed by competent authority.

P.G. 203-05, Page 1, Paragraph 1

PERFORMANCE ON DUTY

GENERAL REGULATIONS

**SERGEANT COREY DAILY
DETECTIVE JOHN BERBERIAN**

**DISCIPLINARY CASE NO. 83551/07
DISCIPLINARY CASE NO. 83488/07**

7. Said Detective John Berberian, assigned as indicated in Specification #1, on or about and between January 31, 2007 and April 2, 2007, at a location known to this Department, did wrongfully and without just cause prevent or interfere with an official Department Investigation, to wit, said officer made misleading statements and failed to immediately clarify said statements during an interview conducted by prosecutors at the New York County District Attorney's Office wherein said officer stated that he searched an individual known to this Department in the rear of the laundromat when said search took place inside the bathroom of the laundromat.

P.G. 203-10, Page 1, Paragraph 2(d)

PUBLIC CONTACT

PROHIBITED CONDUCT / GENERAL REGULATIONS

8. Said Detective John Berberian, assigned as indicated in Specification #1, while on-duty, on or about October 7, 2006, at a location known to this Department, with intent to obtain a benefit or deprive another person of benefit, said officer commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized, to wit, said officer subjected a person known to this Department to sexual contact without the latter's consent in that said officer inserted his fingers into the vagina and anus and touched the breast area of said person known to this Department.

P.G. 203-10, Page 1, Paragraph 5

PROHIBITED CONDUCT

NYS PENAL LAW 195.00(1) OFFICIAL MISCONDUCT

In a Memorandum dated March 30, 2010, Assistant Deputy Commissioner Daniels-DePeyster found Respondent **Dailey** GUILTY of the sole Specification in Disciplinary Case No. 83551/07 and Respondent **Berberian** Not Guilty of Specification Nos. 1, 2, 5 and 8, and Guilty of Specification Nos. 3, 4, 6 and 7 in Disciplinary Case No. 83488/07.

Having read the Memorandum and analyzed the facts of these instant matters, I approve all findings in both disciplinary matters, including the recommended penalty concerning Respondent Dailey, but disapprove the recommended penalty concerning Respondent Berberian.

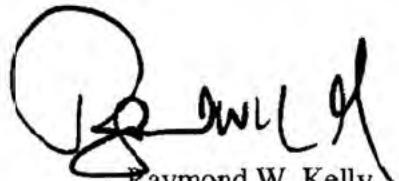
The actual findings of guilt involving Respondent Berberian concern very serious issues, and are problematic regarding his ability to remain a viable member of this Department. Thus, I find that his immediate separation from the Department is required. It is noted that Assistant Deputy Commissioner DePeyster recommended a summary dismissal of Respondent Berberian. However, I will permit an alternative manner of separation from the Department at this time.

**SERGEANT COREY DAILY
DETECTIVE JOHN BERBERIAN**

**DISCIPLINARY CASE NO. 83551/07
DISCIPLINARY CASE NO. 83488/07**

Therefore, it is directed that a post-trial vested-interest retirement agreement be implemented with Respondent Berberian. In consideration of such, Respondent Berberian is to remain, and to separate from the Department, on a continued suspended duty status. Respondent Berberian is to also forfeit all suspension days (*with and without pay*) since served and to be served, including forfeiting all accrued leave and time balances. A One-Year Dismissal Probation period will also be imposed.

Such vested-interest retirement shall also include Respondent Berberian's written agreement to not initiate any administrative applications or judicial proceedings against the New York City Police Department, including seeking reinstatement or return to the Department. If Respondent Berberian does not agree to the terms of this vested-interest retirement as noted, this Office is to be notified without delay. This agreement is to be implemented **IMMEDIATELY**.



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings : X
-against- : FINAL
Detective John Berberian : ORDER
Tax Registry No. 921146 : OF
Quartermaster Section : DISMISSAL

Detective John Berberian, Tax Registry No. 921146, Shield No. 527, Social Security No. ending in 1030, having been served with written notice, has been tried on written Charges and Specifications numbered 83488/07, as set forth on form P.D. 468-121, dated November 26, 2007 and after a review of the entire record, Respondent Berberian is found Not Guilty of Specification Nos. 1, 2, 5 and 8; and Guilty of Specification Nos. 3, 4, 6 and 7.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Detective John Berberian from the Police Service of the City of New York.

RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE:



POLICE DEPARTMENT

March 30, 2010

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Sergeant Corey Dailey
Tax Registry No. 913758
Narcotics Borough Manhattan South
Disciplinary Case No. 83551/07

Detective John Berberian
Tax Registry No. 921146
Quartermaster Section
Disciplinary Case No. 83488/07

The above-named members of the Department appeared before me on July 13, July 14, August 24, October 5, and November 30, 2009, charged with the following:

Disciplinary Case No. 83551/07

1. Said Sergeant Corey Dailey assigned to Manhattan South Downtown Narcotics District, while on duty, on or about October 7, 2006, at a location known to this Department, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit, said Sergeant failed to make proper inquiries relating to an ongoing narcotics investigation that resulted in a search of a female, and failed to ensure the preparation of a UF-250 following said search.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
PROHIBITED CONDUCT

Disciplinary Case No. 83488/07

1. Said Detective John Berberian assigned to Quartermaster Section, while on-duty, on or about October 7, 2006, at a location known to this Department, said officer did subject a person known to this Department to sexual contact by forcible compulsion, to wit, said officer inserted his fingers into the vagina and anus and touched the breast area of said person known to this Department.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT - PROHIBITED
CONDUCT / GENERAL REGULATIONS

N.Y.S. PENAL LAW SECTION 130.65(1) – SEXUAL ABUSE IN THE
FIRST DEGREE

2. Said Detective John Berberian assigned to Quartermaster Section, while on-duty, on or about October 7, 2006, at a location known to this Department, said officer did subject a person known to this Department to sexual contact without the latter's consent, to wit, said officer inserted his fingers into the vagina and anus and touched the breast area of said person known to this Department.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT - PROHIBITED
CONDUCT / GENERAL REGULATIONS

N.Y.S. PENAL LAW SECTION 130.55 – SEXUAL ABUSE IN THE
THIRD DEGREE

3. Said Detective John Berberian assigned as indicated in Specification # 1, while on-duty, on or about October 7, 2006, at a location known to this Department, said officer, while acting in concert with another Member of Service, did restrain a person known to this Department, to wit, said officer did prevent said person known to this Department from leaving a laundromat bathroom.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT - PROHIBITED
CONDUCT / GENERAL REGULATIONS

N.Y.S. PENAL LAW SECTION 135.05 – UNLAWFUL INPRISONMENT IN
THE SECOND DEGREE

4. Said Detective John Berberian assigned as indicated in Specification # 1, while on-duty, on or about October 7, 2006, at a location known to this Department, said officer, while acting in concert with another Member of Service, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit, said officer did conduct an unlawful search of a person known to this Department.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT - PROHIBITED
CONDUCT / GENERAL REGULATIONS

5. Said Detective John Berberian assigned as indicated in Specification # 1, while on-duty, on or about October 7, 2006, at a location known to this Department, did fail and neglect to perform said officer's duties, to wit, said officer did conduct an unlawful search of a female known to this Department in that said officer failed to ensure that a female Member of Service was present during said search as directed by competent authority.

P.G. 203-05, Page 1, Paragraph 1 – PERFORMANCE ON DUTY –
GENERAL REGULATIONS

6. Said Detective John Berberian assigned as indicated in Specification # 1, while on-duty, on or about October 7, 2006, at a location known to this Department, did fail and neglect to perform said officer's duties, to wit, said officer failed to prepare a UF-250 following a search of a female known to this Department as directed by competent authority.

P.G. 203-05, Page 1, Paragraph 1 – PERFORMANCE ON DUTY –
GENERAL REGULATIONS

7. Said Detective John Berberian, assigned as indicated in Specification # 1, on or about and between January 31, 2007 and April 2, 2007, at a location known to this Department, did wrongfully and without just cause prevent or interfere with an official Department Investigation, to wit, said officer made misleading statements and failed to immediately clarify said statements during an interview conducted by prosecutors at the New York County District Attorney's Office wherein said officer stated that he searched an individual known to this Department in the rear of the laundromat when said search took place inside the bathroom of the laundromat.

P.G. 203-10, Page 1, Paragraph 2(d) – PUBLIC CONTACT - PROHBITED
CONDUCT / GENERAL REGULATIONS

8. Said Detective John Berberian, assigned as indicated in Specification # 1, while on-duty, on or about October 7, 2006, at a location known to this Department, with intent to obtain a benefit or deprive another person of benefit, said officer commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized, to wit, said officer subjected a person known to this Department to sexual contact without the latter's consent in that said officer inserted his fingers into the vagina and anus and touched the breast area of said person known to this Department.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
N.Y.S. PENAL LAW SECTION 195.00(1) – OFFICIAL MISCONDUCT

The Department was represented by Beth Douglas, Esq. and Nancy Slater, Esq., Department Advocate's Office. Respondent Dailey was represented by Philip Mellea, Esq., and Respondent Berberian was represented by Peter Brill, Esq.

The Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 83551/07

Respondent Dailey is found Guilty.

Disciplinary Case No. 83488/07

Respondent Berberian is found Not Guilty of Specification Nos. 1, 2, 5 and 8; and Guilty of Specification Nos. 3, 4, 6 and 7.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Johanna Socorro, Francisca Del Carmen, Detective John Licato, Detective Michael Corbett, Robert Shull, Richard Truong, and Johnathan Lenzner as witnesses.

Johanna Socorro¹

Socorro, who is currently employed as a waitress, was born in the Dominican Republic. She came to the United States in 2000, and she is in this country illegally. She lives with her aunt in the Bronx. She has known her boyfriend, Manuel Mateo, for four years.

¹ Socorro's testimony was translated from Spanish by Nicholas Woloschuk and Alicia Cugliari, certified interpreters.

Socorro testified that early in the morning of October 7, 2006 she went to Mateo's home to meet him for breakfast. She explained that they regularly ate breakfast together on the weekends. Mateo lived in Manhattan on 31 Street between Third and Lexington Avenues. While Mateo went to a store at the corner that day to buy a cup of coffee, Socorro waited in his apartment. When 20 or 30 minutes had passed, she became worried and started to call Mateo's cell phone. Nobody picked up on the first call. On the second call, a man answered the phone and said that he was a taxi driver who had found the telephone. [The man who claimed to be a taxi driver is subsequently identified as Respondent Berberian.] Socorro testified that although her English was not very good, she was able to arrange a meeting with Respondent Berberian to retrieve Mateo's cell phone. They met at 29 Street and Lexington Avenue. Respondent Berberian was wearing his shield around his neck, and he told Socorro that she was being arrested for drugs. Socorro became frightened. She explained that she never before had contact with the police and she was surprised, as she had been expecting a taxi driver. When Respondent Berberian moved her toward a pay phone at the corner, Socorro told him, "Don't grab me, everybody is looking." Respondent Berberian made a telephone call, and shortly thereafter another police officer approached the scene. Socorro described this second member of the service as having "dark skin, not very dark skin, he didn't have hair and . . . he had a defect in one eye." According to Socorro, Respondent Berberian led her into a laundromat and the second officer followed three or four steps behind. Respondent Berberian displayed his shield to an Asian man in the laundromat and then led Socorro to the laundromat's bathroom. He instructed Socorro

to go inside the bathroom. He closed the bathroom door all the way with Socorro and himself inside the bathroom and the second officer standing on the other side of the door.

Socorro testified that Respondent Berberian instructed her to pull up her blouse. Socorro did not understand Respondent Berberian, and so he motioned with his hands for her to raise her blouse. Socorro raised her blouse above her breasts. She was not wearing a bra, and her breasts were exposed. According to Socorro, Respondent Berberian placed his hands on her breasts and squeezed them. Respondent Berberian then instructed her to open her mouth. Respondent Berberian looked inside her mouth, but Socorro pulled her head back and said no when Respondent Berberian got close to her face as if he was going to kiss her. Her breasts were still exposed, and Respondent Berberian touched and squeezed them a second time. He then instructed and motioned for her to pull down her pants. Socorro pulled down her pants and underwear. According to Socorro, Respondent Berberian placed a finger inside her vagina and then her anus. Then he brought his finger back to her vagina, then her anus, and then her vagina once more before he told her to pull her pants back up. When she started to pull her pants up, Respondent Berberian stopped her and rubbed her clitoris with two fingers. When he was finished, Respondent Berberian instructed her to go. As she pulled her pants up, Socorro saw Respondent Berberian look at his hand and then go to the sink to wash himself. As Socorro left the bathroom, she was crying "like a crazy person." She did not notice if the other officer was still standing there.

Socorro called her mother in the Dominican Republic and told her mother and brother about what had just taken place. She then called a friend, Francisca Del Carmen, and told her about the incident. Socorro told Francisca that she left her pocketbook at

Mateo's house, but she did not want to go back there because she was afraid that the police would be there. Francisca convinced Socorro to go get the pocketbook. After retrieving the pocketbook, she went to a friend's house because she was afraid to be alone. She did not tell this friend about the incident because she was embarrassed. After a half hour at the friend's house, she returned home to her aunt's house. After she got home, she received a telephone call from Mateo's cell phone. When she answered the call, nobody spoke on the other end of the line. She believed it was Respondent Berberian who had placed the call since he was the one in possession of Mateo's cell phone. She later received calls with blocked numbers, but she did not answer them. Her mother ultimately called her to let her know that the blocked numbers were actually calls made by Mateo in jail. The next time Socorro received a blocked call, she picked it up and told Mateo about what had occurred. Mateo told her that that must be the reason the white officer asked him how old she (Socorro) was and if she was his girlfriend. Later that day, Mateo called Socorro again and told her to meet him in court the following day with a friend named Renny.

On October 8, 2006, Socorro and Renny went to court. Socorro asked Renny to tell Mateo's attorney, Richard Southard, about what occurred in the laundromat bathroom. According to Socorro, Southard responded that he needed to focus on Mateo right then but would be available to talk about other stuff later. That night, after Mateo was already home, Socorro met with him and described to him what took place in the bathroom. After the incident, she experienced vaginal itching. Mateo told her to see a doctor about it. She explained that she had not yet gone to a doctor because she was frightened and ashamed. Mateo got a female neighbor to accompany Socorro to

Bellevue Hospital the next day. Socorro at first could not recall the neighbor's name but later remembered that her name was Yolanda. At the hospital, Socorro told a social worker about the incident. Yolanda had to translate for her. The police ended up being called, and Socorro told them about what occurred in the bathroom. According to Socorro, she at one point had to speak to other police officers, but they did not pay attention to her and claimed that the men who abused her were police impersonators. Because nobody wanted to pay attention to her, Socorro reached out again to Southard, the attorney. She was ultimately shown a photo array. [Respondent's Exhibit (RX) E is a copy of Socorro's medical records from Bellevue Hospital, dated October 9, 2006. According to the records, Socorro told the nurse that she had had consensual sexual intercourse on October 8, 2006.]

Socorro testified that the incident left her frightened and feeling like she was being followed. After the incident, she attended counseling for six or more months. Approximately a year and a half after the incident, she learned about an immigration program for immigrants who have been victims of crime. She is trying to become a legal citizen and has met with an immigration attorney. She has a pending lawsuit against the Department.

On cross-examination, Socorro testified that Mateo gave her a cell phone, and her cell phone line was under his name. [RX B is the phone record for the cell phone she used on October 7, 2006. The record shows that five calls were made to Mateo's cell phone between 12:16 p.m. and 12:24 p.m. that day. Two calls were made to Socorro's mother's house in the Dominican Republic (at 12:34 p.m. and 4:14 p.m.). Three calls were made to Del Carmen in Lowell, Massachusetts (at 1:20 p.m., 3:14 p.m., and 5:13

p.m.). RX C is the phone record for the cell phone that Mateo used that day. The record shows that two calls were made to Socorro's cell phone (at 3:02 p.m. and 3:03 p.m.).]

Socorro testified that she could not recall if she got a new cell phone number the day after the incident. She later stated, however, that she believes Mateo got a new phone number for her because Respondent Berberian had her old number and she was afraid. [RX D is a phone record for a cell phone account in Mateo's name, starting after October 7, 2006. It shows a call to Socorro's mother at 5:08 p.m. on October 9, 2006 and another at 8:11 a.m. on October 10, 2006. It also shows three calls to Del Carmen on October 8, 2006 (at 12:22 a.m., 2:31 p.m., and 3:29 p.m.).]

Socorro testified that she was not certain if Respondent Dailey was the member of the service who waited outside the laundromat bathroom on October 7, 2006. She explained that Respondent Dailey looked like that officer, but it could have been somebody else. She went on to state that Respondent Dailey's face is not the face that she remembers seeing that day, and the officer who was present was shorter and had lighter skin than Respondent Dailey. According to Socorro, she never told anybody at the District Attorney's Office that Mateo instructed her to lie about a black officer being at the laundromat, Mateo never told her about being arrested by a black officer, and nobody ever informed her why Respondent Berberian was not arrested for assaulting her. Socorro stated that she does not know who arrested Mateo.

Socorro testified that in 2000 she crossed from Mexico into the United States without stopping at the border. Even though she is not legally authorized to work in this country, she has worked as a waitress since her arrival. She pays federal and state taxes. She has known Mateo since 2005 or 2006, and he was employed as a taxi driver at the

time of the incident. According to Socorro, she had no reason to believe that Mateo was a drug dealer. She did not discuss Mateo's criminal case with him, and she does not know how that case ended. It was her idea to initiate a civil suit. Using an interpreter, Socorro had multiple interviews with Southard. She has met with Southard to discuss her case on three or four occasions. She also signed papers that he gave her. Upon review of the Amended Complaint for the lawsuit, Socorro testified that she did not recall ever seeing it before. [RX A is a copy of the Amended Complaint, naming Respondent Dailey, Respondent Berberian, and Detective John Licato as witnesses. It is dated December 5, 2008 and signed by Southard. According to the Complaint, Respondent Dailey and Licato were outside the laundromat bathroom while Socorro was being sexually assaulted by Respondent Berberian inside the bathroom.] Socorro reiterated that a black officer stood outside the bathroom while she was inside with Respondent Berberian. According to Socorro, she did not notice a third member of the service at the laundromat on the day of the incident, and she believes that she is suing only the two individuals who were in the laundromat that day.

Socorro testified that she and Mateo had been dating for several months at the time of the incident, but she could not recall exactly how long they had been together. She understands English better than she can speak it. At the time of the incident, she understood and spoke English only a little bit. She could not recall how many times she called Mateo's cell phone before Respondent Berberian picked up. She stated that she understood everything that Respondent Berberian told her in that telephone conversation. She testified that Respondent Berberian never actually grabbed her while they were outside on the street together. Her initial contact with Respondent Berberian on the

street, however, made her feel ashamed because people were looking at her. At no point while Respondent Berberian was touching her in the laundromat bathroom did Socorro tell him to stop. Socorro explained that she felt she had to obey Respondent Berberian because he is a police officer.

Socorro testified that even though there were other people in the laundromat, she did not scream while being assaulted because she was afraid and also felt obligated to comply with a police officer. She spoke to Mateo about the incident more than once before going to the hospital. In an interview with Sergeant Timothy Gansrow, Socorro stated that the white officer locked her in the room and told her to lower her shirt while the other officer stayed outside. She reiterated that she saw only two members of the service in the laundromat that day. Mateo did not go with her when she went to the District Attorney's Office to discuss the case.

[RX F1 and F2 are the compact disc recording and transcript of an Internal Affairs Bureau (IAB) interview of Socorro. The interview was conducted by Sergeant Gleason in Bellevue Hospital on October 12, 2006. Yolanda Vasquez, a friend or acquaintance of Socorro's, acted as translator. Vasquez is not a certified interpreter. In the interview, Socorro stated that on Saturday morning she was at Vasquez's house when she (Socorro) called Mateo. A man claiming to be a taxi driver answered the call. When Socorro met the man to retrieve the phone, the man took out a police badge, told her that she was under arrest, and asked her if she had drugs. The man (who was white) summoned a second police officer (who was black), and they led Socorro into a laundromat. The white officer showed an Asian man in the laundromat his badge and then led Socorro to the bathroom. He closed the door while the black officer waited

outside. The white officer told Socorro to pull up her shirt and pull down her pants. The officer proceeded to touch her breasts, insert fingers into her vagina and anus, and attempted to kiss her. Socorro let the officer do whatever he wanted because she believed she was under arrest and was going to be deported. Two days after the incident, Socorro was feeling uncomfortable "down there," and Vasquez took her to the hospital. Socorro has not seen or spoken with Mateo since the incident. Socorro and Mateo have not been together for long, and she "hasn't really gone to his house" before. The last time Socorro spoke with Mateo was the night before the incident.]

Francisca Del Carmen²

Del Carmen, who is currently employed as a waitress, lives in Massachusetts. Before moving to Massachusetts, she used to work in a restaurant in New York with Socorro. She and Socorro first met in 2003 or 2004. They are friends and speak to each other on the telephone. She testified that on October 7, 2006, Socorro called her crying, nervous, and afraid. Socorro told her that when she called Mateo's cell phone, a stranger picked up and identified himself as a taxi driver who had found the phone. When Socorro met the man to retrieve the phone, he identified himself as a police officer and brought her into a laundromat. The officer went into the laundromat bathroom with Socorro while another police officer waited outside. The officer who went into the bathroom touched Socorro's breasts numerous times and inserted fingers into her vagina and "in the back." Socorro did not give a physical description of the officers to Del Carmen. Socorro told Del Carmen that she did not want to go home

² Del Carmen's testimony was also translated from Spanish by Alicia Cugliari.

because she was afraid that the police would be there. Del Carmen did not recall having any additional telephone conversations with Socorro on that day. The following day, Del Carmen called Socorro to see how she was doing. In that conversation, Socorro told Del Carmen that she was going to report what took place in the laundromat bathroom. Del Carmen did not recall speaking to Socorro again later that day or the next day.

On cross-examination, Del Carmen testified that she did not know Mateo sold drugs. Socorro did not tell her that Mateo had been arrested. Del Carmen is a legal resident of the United States, but she knows that Socorro entered the country illegally. Socorro told Del Carmen that the police officer inserted more than one finger into her. Del Carmen stated that she did not know that Socorro has initiated a civil lawsuit. The telephone conversation with Socorro on October 7, 2006 took place between 1:00 p.m. and 2:00 p.m.

Detective John Licato

Licato, a 17-year member of the Department, is currently assigned to Narcotics Borough Manhattan South. He testified that on October 7, 2006, he and Respondent Berberian were working together in the Manhattan South Downtown Narcotics District. There were other members of the service assigned to his team that day, including a female detective, Detective Brown. Respondent Dailey was the team supervisor. He testified that he and Respondent Berberian responded to the scene of an arrest at 28 Street and Park Avenue. They learned of the arrest via a radio transmission. He explained that

it is usually the sergeant who would make such a transmission, but he could not specifically recall who it was that made the radio transmission on that day.

Upon their arrival at the location, Mateo was already in custody. Licato and Respondent Berberian were instructed to take Mateo's vehicle to the 13 Precinct. Respondent Berberian drove Mateo's car to the station house while Licato followed in a Department vehicle. It took five or ten minutes to drive to the station house. Licato testified that when Respondent Berberian dropped off Mateo's car and got into the Department vehicle, he (Respondent Berberian) had a cell phone in his hand. Respondent Berberian told Licato that the cell phone was from Mateo's car and had started to ring during the ride to the station house. Respondent Berberian answered the telephone. Respondent Berberian also told Licato that he had communicated with Respondent Dailey, and they were directed to go to the vicinity of 29 Street and Lexington Avenue. While they drove to that location, Licato heard Respondent Berberian talking on the phone with an individual (previously identified as Soccorro) about the meeting point.

Licato did not recall Respondent Berberian discussing narcotics while on the telephone. At the location, Respondent Berberian made contact with Soccorro. Both Licato and Respondent Berberian had their shields displayed around their necks. When Respondent Berberian approached Soccorro, Licato was standing approximately ten feet away and did not hear their conversation. When Respondent Berberian and Soccorro went to the laundromat, Licato followed five to ten feet behind. Respondent Berberian and Soccorro entered the bathroom at the rear of the laundromat.

According to Licato, Respondent Berberian did not close the bathroom door, leaving it open a couple of inches. Licato stayed outside of the bathroom but was able to look inside. He heard Respondent Berberian ask Socorro if she had anything on her and instruct her to empty her pockets. He observed Respondent Berberian shrug his shoulders and wave his hand while he (Respondent Berberian) conversed with Socorro. At one point, Respondent Berberian yelled because Socorro was not being compliant. Then the bathroom door opened, and Respondent Berberian and Socorro exited. Licato stated that Socorro's demeanor did not seem out of the ordinary, but he did not see her face. Licato testified that Respondent Dailey was not present during the encounter with Socorro.

After leaving the laundromat, Licato and Respondent Berberian got back in their vehicle, and Respondent Berberian called Respondent Dailey to find out where to meet the rest of the team. Licato testified that he does not know if Respondent Berberian informed Respondent Dailey that he had searched a female. Licato stated that Department procedure dictates that the search of a female should be conducted by a female member of the service. He further stated that a Stop, Question, and Frisk Report (UF-250) is required any time a member of the service "ha[s] a contact with a possible subject or anybody and it involves . . . other than the brief inquiry as far as name, location." Licato did not prepare a UF-250 for the encounter with Socorro. As a result of the incident, he received Department charges, to which he ultimately pled guilty.

On January 31, 2007, Licato was interviewed at the District Attorney's Office. He was directed by an attorney beforehand to answer only the questions that were asked of him. He did not say anything in that interview about Respondent Berberian taking

Socorro into the laundromat bathroom. On March 23, 2007, Licato had a second interview at the District Attorney's Office. At the second interview, Licato was informed that the record from the previous interview was "going to be scratched." Licato mentioned the bathroom in the second interview because he was specifically asked about it.

On cross-examination, Licato testified that his March 23, 2007 interview was conducted by Assistant District Attorneys Shull and Dougherty. When he was told that the previous interview was being scratched, he took it to mean that he would not be held accountable for it. Except for the part about the laundromat bathroom, there was nothing materially different between the first and second interviews.

Licato testified that when a cell phone is found on a drug sale subject, it is not uncommon to investigate callers to that telephone since drug dealers often receive calls from people looking to buy drugs and from family members stashing drug money. He stated that Respondent Berberian and Socorro spoke briefly at the back of the laundromat before entering the bathroom. Licato did not lose sight of Respondent Berberian at any point between the time he (Respondent Berberian) got out of the car to meet Socorro and the time he entered the laundromat. At no point were any other members of the service present. While Respondent Berberian and Socorro were in the bathroom, the door was open two to three inches. From where Licato was standing, he was able to see Respondent Berberian's back and motions, but he did not have a full view of the bathroom. According to Licato, Respondent Berberian is very animated in general, and the way that he was gesturing while talking to Socorro was normal. At the time of the encounter, Licato had been working with Respondent Berberian for approximately 18

months. He stated that the tone that Respondent Berberian took with Socorro was similar to the tone he took with other individuals in similar circumstances. Respondent Berberian and Socorro were in the bathroom for "just a few brief minutes." Respondent Berberian left the bathroom immediately after Socorro. Licato did not see or hear Respondent Berberian stop to wash his hands. For the rest of the tour Respondent Berberian behaved normally. Licato stated that during the course of his career he has stopped, questioned, and frisked thousands of people. He is not sure if he has seen any of those people cry.

Licato testified that while a male member of the service can frisk a female subject, a female member of the service should be called to the scene if a more thorough search is going to be conducted. At no point that day did Licato ask Respondent Dailey if a UF-250 should be prepared, inform him that a female subject was searched, or discuss the encounter at all with him.

On redirect examination, Licato testified that on no other occasion did he ever see Respondent Berberian take a female into a bathroom for any reason.

Upon questioning by the Court, Licato stated that he pled guilty to failing to prepare a UF-250, failing to cooperate with the District Attorney's Office, neglecting to summon a female member of the service to the scene, and one other charge dealing with the search.

Detective Michael Corbett

Corbett, a 12-year member of the Department, is currently assigned to IAB. In October or November 2006, he was assigned to investigate Socorro's allegations. He

explained that the investigation commenced when someone at Bellevue Hospital reported that Socorro had been sexually assaulted. Corbett testified that a police officer must prepare a UF-250 whenever he makes a stop for a felony or penal law misdemeanor. Each UF-250 is supposed to be signed by the officer who prepares the report and a supervisor who reviews it. Based on his investigation, Corbett determined that Respondent Berberian should have prepared a UF-250 for his encounter with Socorro. [Department's Exhibit (DX) 1 is a UF-250.] According to Corbett, however, Respondent Berberian did not have cause to stop Socorro in the first place, and any search of Socorro should have been conducted by a female member of the service.

On cross-examination, Corbett testified that it is not uncommon for witnesses to lie when interviewed by the police. Although Corbett did not handle the initial call out for the investigation, he reviewed the paperwork that pertained to it. According to the paperwork, Socorro told Gleason on October 12, 2006 that one of the members of the service involved in the encounter was a tall, husky Hispanic with light hair and eyes. The other member of the service was husky, black, and bald. Corbett stated that Socorro specifically maintained that Respondent Dailey was present at the laundromat. Based on his investigation, however, Corbett determined that Socorro's assertion about Respondent Dailey was not truthful.

On November 14, 2006, Corbett interviewed Richard Truong, who was present in the laundromat at the time of the incident. Truong told Gleason that one of the officers involved in the incident was Hispanic, and the other officer was black. Based on his investigation, however, Corbett determined that neither a Hispanic nor a black member of the service was actually there.

In the closing report for the investigation, Corbett wrote that medical records indicated that Socorro had some bruising and tenderness in the vaginal and anal openings. Corbett testified that the mention of bruising in his report was an error because the medical records only included tenderness, not bruising.

In his Official Department Interview, Respondent Berberian denied placing his hands on Socorro. Corbett testified that three to four weeks after Socorro's final interview at the District Attorney's Office, he was informed that Respondent Berberian would not be prosecuted. According to Corbett, the District Attorney's Office did not provide him with a reason for this decision.

In his closing report, Corbett found the allegation of sexual misconduct against Respondent Dailey to be unfounded. The only charge that Corbett substantiated with respect to Respondent Dailey was for failure to supervise a member of the service. During the investigation, Respondent Dailey maintained that he was not informed until after the stop that the subject of the stop was female. Corbett stated that neither the Patrol Guide, nor any manual, specifically dictates what a proper inquiry is when conducting an investigation. According to Corbett, not all searches of females have to be conducted by female officers. He testified that when he was on patrol he knew whether or not it was necessary to prepare a UF-250 without receiving instruction from a supervisor.

On redirect examination, Corbett clarified that a male officer can search a female subject in situations where the safety of the officer or someone else is threatened. During the investigation, Respondent Berberian stated that Respondent Dailey was aware before the stop took place that a female was going to be the subject.

Robert Shull

Shull has been an Assistant District Attorney in New York County for eight years. In October 2006, he was assigned the case involving Socorro's allegations of sexual assault. Shull was closely supervised on the case by Michael Dougherty. Shull met with Socorro for the first time a week or two after the initial allegation was made. At that meeting, Socorro seemed to be very straightforward and became emotional at times while describing what took place. Shull spoke with Socorro again on additional occasions. Socorro told Shull that a sexual assault occurred when Respondent Berberian brought her into the laundromat bathroom and shut the door. Socorro also told Shull that a black member of the service was involved.

On January 31, 2007, Shull and Dougherty met with Respondent Berberian. Respondent Berberian's attorney was present. Respondent Berberian told Shull that when he met Socorro on the street, she was embarrassed to be outside in the open talking to the police and asked to go inside the laundromat at the corner. Respondent Berberian also told Shull that at some point while he was talking with Socorro in the back of the laundromat, he asked her to empty her pockets. Socorro put the contents of her pockets on a washing machine or dryer. There was nothing incriminating on Socorro, so Respondent Berberian let her go. On that same day, Shull also spoke with Licato, who stated that he was present in the laundromat on the day of the incident. Meanwhile, Respondent Dailey told Shull that he had received a radio transmission from either Respondent Berberian or Licato informing him that they were going to investigate something further. A few minutes later, he heard back from them that nothing had come

of the investigation. In a second round of interviews that day, Shull asked Respondent Berberian and Licato more specific questions. According to Shull, when asked if they ever went into the laundromat bathroom, they replied negatively.

Shull subsequently met again with Socorro to find out why she believed it had been a black member of the service at the laundromat. Socorro told Shull that although she and Mateo had discussed with each other the physical descriptions of the police officers they encountered, in her mind there was a white officer and a black officer at the laundromat. At a later date, Licato's attorney contacted Shull to let him know that Licato had something to say that would clear up the record. In a March 23, 2007 interview, Licato told Shull that Respondent Berberian and Socorro did, in fact, go into the bathroom at the back of the laundromat, that the bathroom door had been closed slightly, but he was still able to see what went on inside. Shull then reached out to Respondent Berberian to see if he had any additional information to provide. In an April 2, 2008 interview, Respondent Berberian told Shull that instead of searching Socorro at the back of the laundromat, he had actually taken her into the bathroom.

Shull testified that criminal charges were not brought against anybody involved in this case because the District Attorney's Office was uncomfortable with Socorro's identification of the officers. Mateo's criminal case was ultimately dismissed because the District Attorney's Office did not want the officers to testify in the event that there had been an improper search. According to Shull, at no point did Socorro recant her testimony about what happened to her. Criminal charges were not brought against Respondent Berberian because the office was not able to speak to Mateo, the office was uncomfortable that Socorro had conferred with Mateo and the decision was made not to

prosecute. The decision not to prosecute Respondent Berberian was made at a meeting of the Chief of the Trial Division and the Chief of the Sex Crimes Unit.

On cross-examination, Shull testified that Socorro was adamant that there was a black member of the service present in the laundromat. Even when Shull told her that there could not have been a black officer there, Socorro still said that she remembered one white officer and one black officer. Socorro told Shull that she was not pressured by Mateo to identify a male black officer. As Shull recalled, Socorro first reported the incident to the Internal Affairs Bureau. Shull let Corbett know that Socorro still claimed that a black officer was involved. Shull's meetings with Respondent Berberian were documented in notes taken by a paralegal, Morgan Clark. While Clark captured all of the major points in the interview, she is not an expert at shorthand. Shull testified that as he remembered the second interview with Respondent Berberian on January 31, 2007, Dougherty asked if at any time he (Respondent Berberian) was in the laundromat bathroom, and Respondent Berberian replied negatively. This question about the bathroom was not reflected in Clark's notes. Shull conceded that it was possible that the question was not asked quite the way he remembered. Shull does not recall ever telling Licato that his January interview statements would be disregarded. Shull does not believe he would ever make such a claim to an interview subject. It was Shull who ultimately informed IAB that the District Attorney's Office would not be going forward with prosecution. Mateo never acted as a translator when Socorro was interviewed at the District Attorney's Office.

On redirect-examination, Shull testified that each time Socorro told him about the incident, she stated that the assault occurred inside the bathroom.

Upon questioning by the Court, Shull stated that each time he spoke with Socorro he used one of the District Attorney's Office's professional interpreters.

Richard Truong

Truong is the owner of the laundromat on Lexington Avenue. He testified that October 7, 2006 was a busy day at the laundromat. At approximately 12:00 p.m. that day, a member of the service (previously identified as Respondent Berberian) walked into the laundromat, displayed his shield, and led a woman (previously identified as Socorro) toward the back of the store. Another member of the service followed behind them. Respondent Berberian and Socorro went into the bathroom, and the other officer waited outside. After five or ten minutes, the two officers exited the store, and Socorro followed behind them. According to Truong, Socorro looked sad and like she was crying.

[DX 2 consists of eight photographs of Truong's laundromat. The photographs were taken by the Crime Scene Unit in November 2006. Truong stated that the photographs accurately depict how the inside of the laundromat looked on the day of the incident.]

On cross-examination, Truong testified that there were more than 15 customers in the laundromat at the time of the incident, and he was constantly working. Truong described both officers as big, tall, and Hispanic. According to Truong, the first officer who walked in the store had some white hair and was balding in the front. Truong could not remember the second officer. The bathroom had an out-of-order sign on it. He explained that the sign was posted so that only customers would use the facilities. The

laundromat has a back door, but it is always locked. The back door is made of glass, and there is a metal door in front of it. It is possible to see out through the back door and people on 29 Street can see inside the back of the laundromat, when looking through the back door. Truong was interviewed four or five times about the incident. He did not recall ever stating in an interview that one of the officers involved in the incident was black. Upon review of a Prisoner Movement Slip (for an individual named Baucom) [RX G], Truong testified that he did not recognize the person on the slip. He stated that Respondent Dailey was not present in the laundromat on the day of the incident.

Upon questioning by the Court, Truong testified that he saw the first officer go into the bathroom with Socorro while the second officer waited outside. The bathroom door was closed.

On continued cross-examination, Truong testified that although he was standing at the counter, he was able to see that the bathroom door was closed completely. He did not keep constant observation on the bathroom area. He looked only once and then continued with his work.

Upon questioning by the Court, Truong stated that he had to lean forward over the counter in order to see the back of the laundromat.

Johnathan Lenzner

Lenzner has been an Assistant District Attorney in New York County for five years. In October 2006, he was assigned Mateo's narcotics case. He later learned that there was a related police misconduct case being handled by other units at the District Attorney's Office. On January 26, 2007, Lenzner met with Respondent Berberian and

asked him about calls received on Mateo's cell phone on the day of the arrest.

Respondent Berberian told Lenzner that he received a call from a man. When asked if there were any other calls to Mateo's phone that day, Respondent Berberian replied negatively. Shull and a third Assistant District Attorney, Art McConnel, then entered the room and told Respondent Berberian about the allegations against him. According to Lenzner, Respondent Berberian became visibly anxious and a little nervous. Respondent Berberian's voice became agitated and his hands moved around a lot. When Shull asked him about a telephone call from Socorro, Respondent Berberian acknowledged that he had, in fact, answered a call from a woman. When Lenzner asked why he failed to mention the call from the woman earlier, Respondent Berberian responded that he did not think it was relevant since nothing came of it. At one point while discussing the telephone calls, Respondent Berberian asked if he could step out into the hallway. Respondent Berberian then asked if he could talk to Shull and Lenzner alone because he did not know McConnel and McConnel's presence was making him anxious. McConnel left the room. Lenzner prepared a memorandum about the January 2007 interview.

The case against Mateo was ultimately dismissed. Lenzner explained that the case was dismissed because Respondent Berberian was the only member of the service who could testify about the recovery of drugs, but the District Attorney's Office did not want to call him as a witness in front of the grand jury.

On cross-examination, Lenzner testified that they did not want to call Respondent Berberian as a witness because they did not want to put someone on the stand who may be reluctant to testify truthfully. The call from the male caller that Respondent Berberian answered on Mateo's phone was about drugs. The call from Socorro, in contrast, did

not involve any discussion of narcotics. Prior to Shull entering the room on January 26, 2007, Lenzner's conversation with Respondent Berberian had been about Mateo's narcotics investigation. Before Shull entered the room, Lenzner had been asking about the telephone calls for the purpose of getting information about narcotics transactions. Lenzner stated that he had dealt before with police officers facing baseless allegations, but Respondent Berberian reacted differently from what he had seen in the past. Respondent Berberian became more comfortable and less agitated once McConnel left the room.

The Respondents' Case

The Respondents called Michael Dougherty and Detective Michael Corbett as witnesses, and they testified in their own behalf.

Michael Dougherty

Dougherty, employed as an Assistant District Attorney in New York County, was the Deputy Chief of the Sex Crimes Unit during the investigation of Socorro's allegations. He oversaw Shull's handling of the case. After Shull met with Socorro, Shull would report to Dougherty. Dougherty himself was present at one or two of the meetings. Dougherty testified that Respondent Berberian was never arrested because it was determined that a case against him could not be proven beyond a reasonable doubt. Dougherty explained that this determination was based on several factors. The first factor was that the Crime Scene Unit was sent to the bathroom where the assault allegedly took place, and no physical evidence was found. The second factor was that

although Socorro's story never wavered, there were questions about how credible she would be perceived by a jury. The question of her credibility stemmed from her identification of Respondent Dailey. Even after being informed that Respondent Dailey could not have been at the laundromat, Socorro was adamant that he was there. The third factor was that Socorro did not tell the District Attorney's Office that her first contact with Mateo after his arrest took place was over the telephone, while he was still in custody. Dougherty did not know what that meant or how it would be perceived. The fourth factor was that for the case to be successful it would have to be proven that Respondent Berberian's touching of Socorro was for sexual gratification and not as part of an unauthorized search. Dougherty did not think it would be possible to prove this element of the crime.

Dougherty testified that Socorro never backed off from her claim that Respondent Dailey was present at the laundromat. Socorro never told the District Attorney's Office that Mateo had instructed her to lie about Respondent Dailey's role in the incident. If a memorandum prepared by a worker at a counseling service that was treating Socorro indicated that Socorro changed her story or admitted to lying about Respondent Dailey, Dougherty does not know where that information came from. Socorro never used Mateo as a translator.

Detective Michael Corbett (recall)

On recross-examination, Corbett testified that Shull was his contact person at the District Attorney's Office. On February 14, 2007, Corbett spoke with Shull about an interview that Shull had with Socorro earlier in the day. Corbett memorialized the

content of the conversation in a worksheet. Corbett testified that he prepared the worksheet as he spoke with Shull, and the worksheet is an accurate reflection of the conversation. [RX H is a copy of the worksheet. The worksheet reads: "Soccorro stated that the second officer, who she previously identified as Sergeant Dailey, may not have been one of the officers that stopped her. Ms. Soccorro stated this because she did not have any contact with him. Ms. Soccorro identified him because of statements made by her boyfriend, Manuel Mateo. Ms Soccorro did state however that the second person was of a darker complexion than her."

Corbett testified that Soccorro identified Respondent Dailey in a photo array. Corbett believes that at some point Soccorro told him that the officer at the laundromat had a lazy eye. A sergeant does not have to be present at the scene of a stop and frisk. It is not necessary for a female officer to be present whenever a female subject is stopped and frisked.

On continued redirect examination, Corbett testified that it is required that searches of female subjects be conducted by female members of the service. According to Corbett, if a female member of the service is not readily available to conduct a search in the field, the female subject will be transported to the command for the search.

On continued recross-examination, Corbett stated that if a male officer is frisking a female subject and feels an object that might be a weapon, and the officer believes his life or someone else's life is in danger, that officer is permitted to conduct a search himself without summoning a female member of the service to the scene. On continued redirect examination, Corbett clarified that the male officer would not be permitted to conduct the search if all he felt was narcotics.

Upon questioning by the Court, Corbett testified that Truong told him that one of the officers involved in the incident was Hispanic, and the other officer was black. [Court Exhibit 1 is an Investigating Officer's Report prepared by Corbett, dated November 14, 2006. In the report, Corbett wrote, "Truong explained that the Hispanic officer displayed a detective shield from around his neck. However, the black officer did not identify himself. Mr. Truong further stated that the Hispanic officer and the female were seen entering the bathroom, while the second officer closed the bathroom door and stood in the doorway."] Corbett showed Truong photographs, but Truong was unable to identify anyone. On continued redirect examination, Corbett stated that his interview with Truong was recorded. Upon review of the interview transcript, Corbett testified that Truong described both officers as Hispanic.

[RX I is a page of notes, signed by Amanda Barcia and dated April 25, 2007. Barcia is a social worker at Harlem Hospital who dealt with Socorro. The notes are about a telephone conversation that Barcia had with Dougherty about Socorro's case. According to the notes, Dougherty informed Barcia that the case had been closed because Socorro admitted to lying about a black officer being present in the laundromat. Socorro also admitted that Mateo told her to lie and accuse his arresting officer.]

Respondent Sergeant Corey Dailey

Respondent Dailey, a 19-year member of the Department, is currently assigned to Narcotics Borough Manhattan. He has held the rank of sergeant since April 2001. He testified that in his training he learned that when a police officer is preparing a UF-250, a supervisor has to respond if the person who was stopped refuses to provide identification.

He never received training with respect to what a proper inquiry is. Respondent Dailey started working with Respondent Berberian in 2003. Respondent Berberian worked on his team. Respondent Dailey stated that he never had to instruct the members of his team on when to prepare a UF-250 because they already knew that information. At no point prior to October 2006 did Respondent Dailey have any problem with Respondent Berberian failing to prepare a UF-250. Respondent Dailey has a weak muscle in one of his eyes.

Respondent Dailey testified that on October 7, 2006, his team was conducting buy and bust operations in the confines of the 13 Precinct. That afternoon, he observed Mateo take part in a narcotics sale. Respondent Dailey supervised and authorized Mateo's arrest and the arrest of the other individual who was involved in the drug transaction. When Mateo was informed that he was being placed under arrest, he became very belligerent and cursed at the field team. Mateo had to be placed in a Department vehicle because he was causing a large crowd to gather.

At one point after Respondent Dailey instructed Respondent Berberian and Licato to transport Mateo's vehicle to the station house, Respondent Berberian called Respondent Dailey on the telephone and informed him that Mateo's cell phone rang and that there may be a lead to investigate. Respondent Dailey told Respondent Berberian to continue the investigation and let him know the outcome. Respondent Dailey explained that drug dealers typically use cell phones to communicate with each other, so it was believed that the intercepted cell phone call could be drug-related. Respondent Dailey did not know exactly where Respondent Berberian was going to continue the investigation. Meanwhile, Respondent Dailey continued processing the prisoners.

At one point, Respondent Berberian contacted Respondent Dailey again to let him know that the results of his investigation were negative. Respondent Dailey took this message to mean that the investigation did not lead to an arrest and nothing further happened. Respondent Dailey testified that at no point did he ever go to the laundromat or meet Socorro. He stated that any officer can stop and frisk a female subject. Only for an in-depth search would he have a female officer respond to the scene. He did not know that a female subject had been stopped that day until he reported to the District Attorney's Office about the case. He later learned that an accusation of sexual assault that was made against him was tossed out because the District Attorney's Office realized that he was not involved in any way. As far as he knows, he was the only member of the service working in the vicinity that day who had an eye condition.

On cross-examination, Respondent Dailey testified that a UF-250 should be prepared whenever a stop or questioning is conducted. On the day of the incident, Respondent Berberian and Licato were assigned to the chase vehicle. They investigated Mateo's cell phone call in between the time that the rest of the narcotics team was processing the arrests and moving to its next location. The team would have been unable to conduct the next operation until Respondent Berberian and Licato returned. Respondent Dailey could not recall if Respondent Berberian informed him that the lead he was following was a female subject. Respondent Dailey did not ask Respondent Berberian what the specific nature of the conversation was with her on the telephone.

Respondent Dailey testified that as a supervisor it is his responsibility to know where all members of his team are located and what duties they are approaching. All he knew of the lead that Respondent Berberian and Licato were following was that it was

located within the confines of the 13 Precinct. Detective Lynn Brown was a female member of the team. She was assigned to the prisoner van that day. When a female subject is arrested, it is Brown who conducts the prisoner search. If Brown is not available, Respondent Dailey makes certain that another female member of the service is present to conduct certain searches of female subjects. He would not take that step in stop, question, and frisk situations. If he is aware of a search, it is his responsibility to find out what type of search it is. When Respondent Berberian informed him that the results of the investigation were negative, Respondent Dailey took it to mean that no arrest had been made. Respondent Dailey did not inquire as to specifically what was negative. When Respondent Berberian and Licato returned to the team's location, Respondent Dailey did not have any questions for them about their investigation. Respondent Dailey did not ask if Respondent Berberian had searched a female subject.

On redirect examination, Respondent Dailey testified that he could not recall if he asked Respondent Berberian specifically where he was going to investigate the lead. Respondent Dailey knew that it was in the 13 Precinct, in the vicinity of where Mateo's arrest took place. Based on Respondent Berberian's report of negative results, Respondent Dailey did not even know if anybody had been stopped.

Upon questioning by the Court, Respondent Dailey testified that he had no contact with Mateo prior to that date.

Respondent Detective John Berberian

Respondent Berberian, a 12-year member of the Department, is currently assigned to the Chemical Biological Radioactive Nuclear Unit, where he is responsible for all the

counter-terrorism supplies for the City. He has participated in approximately 2000 arrests, and he has personally arrested more than 450 people. He has conducted searches as part of these arrests. Depending on the circumstance, different types of searches are conducted. He explained that if a police officer suspects someone of committing a wrongdoing, the officer can stop and question that person. A stop and question session can lead to a frisk. A male officer can frisk both male and female subjects. He explained that if a male officer is frisking a female subject and feels what he believes is a gun, the officer can search the subject. He stated that a female member of the service should be summoned to the scene if a female subject is going to be arrested and it is believed that there are drugs in the prisoner's underwear or body cavity.

Respondent Berberian testified that while assigned to the Manhattan South Downtown Narcotics District on October 7, 2006, he and Licato were assigned to the chase car. At one point, they were called by Respondent Dailey to the scene of an arrest. Mateo had been arrested for selling crack cocaine. Respondent Berberian explained that Mateo had been part of a delivery service, which means he was receiving requests for drugs over the telephone. Respondent Berberian stated that he always seizes the cell phone when dealing with the arrest of a delivery service participant. Mateo was already inside the prisoner van when Respondent Berberian arrived at the scene. Respondent Berberian did not have any personal contact with him. Respondent Dailey instructed Respondent Berberian and Licato to transport Mateo's car to the station house.

Respondent Berberian drove Mateo's car to the station house while Licato followed in a Department vehicle. On the way, Mateo's cell phone rang. Respondent Berberian answered the telephone and a male Hispanic on the other end of the line talked

about narcotics. According to Respondent Berberian, though, the caller was in the Bronx, so the call did not lead to anything. A female (previously identified as Socorro) then called the cell phone. Respondent Berberian told her something about retrieving the phone after a guy who was being chased by the police threw it. Respondent Berberian testified that he told her this story to get her reaction. According to Respondent Berberian, Socorro told him that she needed the phone. Based on his experience, Socorro's response indicated that she was part of the drug business. Socorro called again, and Respondent Berberian arranged to meet her at 29 Street and Lexington Avenue. Although Socorro spoke in broken English, they were able to understand each other. At no point did he say anything to Socorro about being a taxi driver. While still in Mateo's car or perhaps after joining Licato in the Department car, Respondent Berberian spoke to Respondent Dailey to let him know that there was a possible lead.

The area of 29 Street and Lexington Avenue was very busy that day. Respondent Berberian located Socorro and showed her the cell phone. Licato was with him, but neither of them had their shields out on display. When Socorro confirmed that the cell phone Respondent Berberian was carrying was the phone that she wanted, Respondent Berberian identified himself as a police officer. At that point, Socorro claimed that she did not speak English and did not know what he was talking about. She complained that Respondent Berberian was embarrassing her. Respondent Berberian instructed Socorro to step into a phone booth at the corner. He asked her for identification, but she told him that she did not have any. Respondent Berberian then asked her to empty her pockets. Respondent Berberian testified that he wanted to see if she had drugs or a large sum of

money on her. A woman on the street started staring into the telephone booth, and Socorro complained again about being embarrassed.

At that point, Respondent Berberian decided to take Socorro into the laundromat. Respondent Berberian, Socorro, and Licato entered the laundromat, and Respondent Berberian repeated his instruction for Socorro to empty her pockets. The laundromat was crowded, and Socorro repeated her complaint about being embarrassed. They walked to the back of the laundromat. The laundromat had a back door that people on the street could see into, so the only private place that Respondent Berberian could take Socorro was the bathroom. Respondent Berberian and Socorro entered the bathroom, and Licato waited outside. According to Respondent Berberian, the bathroom door remained open approximately six inches. Once inside the bathroom, Socorro emptied her pockets. Socorro had nothing incriminating on her. She put her things back in her pockets, and they left. Respondent Berberian could not recall if it was he or Socorro who exited the bathroom first. He did not wash his hands before leaving the bathroom. According to Respondent Berberian, Socorro did not seem out of the ordinary, and he did not notice her crying.

Respondent Berberian testified that he talks with his hands, and he was probably gesturing with his hands during his encounter with Socorro. He could not recall if he looked in Socorro's mouth, but it is a common thing to do when dealing with drug suspects. Searching in a suspect's mouth requires a police officer to get close to the suspect's face. Respondent Berberian denied placing his hand down Socorro's pants to do a type of cavity search. Respondent Berberian testified that he did not conduct a cavity search of Socorro. He explained that cavity searches are conducted only at the

hospital. According to Respondent Berberian, he did not touch Socorro's body either above or under her clothes. He stated that at no point did he have any physical contact with Socorro.

After exiting the laundromat, Respondent Berberian and Licato notified Respondent Dailey. They then met up with the rest of their team at the location of the next operation. In January 2007, Respondent Berberian met with Lenzner to discuss Mateo's criminal case. When Lenzner asked Respondent Berberian if he answered any calls on Mateo's cell phone, Respondent Berberian told him about the drug-related call from the Hispanic man. Shull and another Assistant District Attorney whom Respondent Berberian did not know then entered the room. Shull told Respondent Berberian that there were questions about misconduct, and Respondent Berberian replied that he felt uncomfortable and wanted his union delegate present. Approximately a week later, Respondent Berberian returned to the District Attorney's Office with his delegate and attorney. His attorney advised him to answer only the questions that were asked. According to Respondent Berberian, at no point during his interview that day was he specifically asked if he entered the laundromat bathroom. Instead, they asked him generally about his location, and he told them that he was in the back of the laundromat. There were no follow-up questions to his response, so he did not elaborate further. He testified that he had no intention of hiding any information, and he would have provided an answer had he been specifically asked about the bathroom.

When Respondent Berberian was asked back to the District Attorney's Office for a follow-up interview, his attorney let him know that he was not obligated to go. Respondent Berberian went to the interview voluntarily. It was at the second interview

that he was asked specifically about the bathroom. Once asked about it, Respondent Berberian informed the interviewers that he had in fact entered the laundromat bathroom. When asked why he did not mention the bathroom earlier, he pointed out to them that he was never asked about it before.

Respondent Berberian conceded that he should have prepared a UF-250 for his encounter with Socorro. He explained that he was responsible for processing 63 bags of crack cocaine that were found in Mateo's car, and he forgot to prepare the UF-250. He denied committing all of the other misconduct with which he has been charged. In conducting his search of Socorro, he obtained neither sexual gratification nor any sort of benefit.

Respondent Berberian testified that he knew Respondent Dailey professionally since 2003, and they worked on the same team starting in September 2004. During that period, he prepared countless UF-250s, and Respondent Dailey never had to instruct him on when a UF-250 was necessary. Respondent Berberian testified that he informed Respondent Dailey that the results of his investigation were negative, which meant that no arrest was made and Respondent Dailey did not have to report to the scene. He could not recall if he gave Respondent Dailey his exact location. He may have given Respondent Dailey a general location, such as "the vicinity of 29 and Lex" or "the confines of the 13 Precinct."

On cross-examination, Respondent Berberian testified that his telephone conversation with Socorro did not involve narcotics. He could not recall if he relayed to Respondent Dailey that he was going to meet a female subject. He found Socorro's behavior suspicious because she at first claimed that she needed Mateo's cell phone but

later pretended, upon learning that he was a member of the service, that she knew nothing about the phone. He wanted to get Socorro out of the public because of her repeated complaints that she was embarrassed. He has searched and frisked suspects on the street before. He was not certain if his back was to the door while he and Socorro were in the laundromat bathroom.

Brown was a female member of Respondent Berberian's team on the day of the incident. Respondent Berberian knew that Brown was in the vicinity of his encounter with Socorro, but he never requested that Brown come to the scene. When Respondent Berberian met with Lenzner in January 2007 to discuss Mateo's criminal case, he did not mention the phone call or meeting with Socorro.

On redirect examination, Respondent Berberian testified that Lenzner was the Assistant District Attorney assigned to prosecute Mateo, so his conversation with Lenzner was strictly about Mateo's case. At the time, Respondent Berberian did not know that Socorro was Mateo's girlfriend, and he did not consider his interaction with Socorro to be relevant. Respondent Berberian stated that there was nothing improper about giving Socorro a fabricated explanation of how he received Mateo's cell phone, as police officers often lie to suspects for the purpose of furthering an investigation. Respondent Berberian's suspicion was raised by Socorro when she started lying to him after he identified himself as a member of the service.

Upon questioning by the Court, Respondent Berberian testified that the bathroom door was ajar during the entire encounter. Licato, who is a white, was outside the door the entire time. No other members of the service were present in the laundromat. Respondent Berberian reiterated that he had Socorro empty her pockets because he

wanted to see if she had drugs or a large sum of money on her. At no point during the encounter did he fear for his safety or conduct a pat down of any type.

Respondent Berberian said that the first meeting he had at the District Attorney's office was trial preparation for the grand jury case of Mateo. He explained that Mateo made bail but the District Attorney's Office was still presenting the case before the grand jury that day and wanted to meet with him, the arresting officer Detective Lee and Detective Demus. While at a second meeting regarding the grand jury testimony, Shull and another male walked into the room and informed Respondent Berberian that there was a sexual misconduct allegation made against him by a female. He stated that "out of nowhere" there is mention of misconduct while he is there on the grand jury matter. He stated that eventually a second meeting was set up with his entire field team where the District Attorney's Office would interview everyone separately regarding a sexual misconduct allegation. Respondent Berberian stated that everyone on the field team had legal representation on that date.

FINDINGS AND ANALYSIS

Disciplinary Case No. 83551/07

Respondent Dailey stands charged herein with the sole Specification of engaging in conduct prejudicial to the good order, efficiency or discipline of the Department on or about October 7, 2006, to wit, said Sergeant failed to make proper inquiries relating to an ongoing investigation that resulted in a search of a female, and failed to ensure the preparation of a UF-250 following said search. Respondent Dailey is found Guilty as charged.

Evidence adduced at trial established that during the course of one of the many buy and bust operations that took place with Respondent Dailey's field team on October 7, 2006, an arrest was made of Mateo and several bags of crack cocaine were seized. Respondent Dailey testified that he supervised and authorized the arrest of Mateo. He also instructed Respondent Berberian and Licato to transport Mateo's vehicle to the station house. Respondent Dailey testified that he did receive a phone call during that time from Respondent Berberian indicating that Mateo left his cell phone in the vehicle which was ringing and he may have a lead to follow. Although Respondent Dailey approved the further investigation, he did not know precisely where Respondent Berberian was, what he was going to do, but he continued to process prisoners.

Respondent Dailey had a duty to make inquiries of Respondent Berberian. He needed to know where he was going and what he planned to do. Respondent Dailey was the supervisor of his field team and was responsible for their whereabouts.

Evidence also established that Respondent Dailey never had to instruct Respondent Berberian on when to complete a UF-250 (Stop, Question and Frisk Report). He testified that a UF-250 is required whenever a person is stopped or questioned. He could not recall Respondent Berberian ever informing him that he stopped a female subject. Respondent Dailey knew he [Respondent Dailey] was in between narcotics operations when Respondent Berberian had to conduct an investigation and the field team would not move on to the next set until Respondent Berberian and Licato returned. Respondent Dailey said he never went to the laundromat, spoke to Socorro or even encountered Mateo prior to the incident date of October 7, 2006. However, Respondent Dailey never testified that he questioned Respondent Berberian upon his return as to what

transpired with the investigation. Although Respondent Berberian said the results were negative and Respondent Dailey took that to mean no arrest was made, the inquiry does not stop there. As a supervisor he should have inquired what investigation Respondent Berberian conducted, what was the result, and he would have likely discovered that a female was stopped, and a UF-250 needed to be prepared.

Accordingly, I find Respondent Dailey Guilty of Specification No. 1.

Disciplinary Case No. 83488/07
Specification Nos. 1 and 2

Respondent Berberian stands charged herein with subjecting a person to sexual contact by forcible compulsion on or about October 7, 2006, to wit, inserting his fingers into the vagina and anus and touched the breast area of said person known to this Department. In addition, he is charged with sexual contact without the latter's consent. Respondent Berberian is found Not Guilty.

Evidence adduced at trial established that following a buy and bust operation where Mateo was arrested for drug possession, his cell phone was recovered by Respondent Berberian. The phone rang and it was the complainant in this matter, Socorro. Socorro testified that she was supposed to meet Mateo on the incident date and when he did not show up, she called his cell phone. No one answered the first time, but on the second call, a male answered and identified himself as a taxi driver. Socorro stated that although she spoke broken English, she arranged to meet the taxi driver to get Mateo's cell phone. She met the person (later identified as Respondent Berberian). He identified himself as a police officer and Socorro said he informed her she was under

arrest for drugs. She said she became frightened. As Respondent Berberian moved her toward a pay phone she responded, "Don't grab me everyone is looking." She said Respondent Berberian made a call and a dark skinned person with a "defect in one eye" responded.

Socorro said the two males escorted her to the laundromat with the second officer following a few steps behind. Respondent Berberian showed his identification to an Asian man in the laundromat and led her to the bathroom. He then closed the door and the other officer remained outside the door. Respondent Berberian then instructed her to pull up her blouse. She did not understand so he motioned with his hands. She pulled her blouse above her breasts and her breasts were exposed because she was not wearing a bra. He placed his hands on her breasts and squeezed. He instructed her to open her mouth, he got close and she pulled away when it looked as if he was going to kiss her. While her breasts were still exposed he touched them again and instructed her to pull down her pants. Socorro described the Respondent using his finger to touch her vagina and anus twice and then her vagina again. He then told her to pull up her pants. As she began to pull up her pants, Respondent Berberian used two fingers to rub her clitoris and when he was finished, he instructed her to go. She saw Respondent Berberian look at his hands and then wash them in the sink. She said as she left the bathroom she began to cry "like a crazy person." She did not notice if the other officer was still standing there.

She called her mother and brother in the Dominican Republic to tell them what happened. She also called a friend, Francisca Del Carmen and told her what transpired. She went to a friend's house, but did not tell of the incident because she was

embarrassed. She later spoke to Mateo on the telephone that night and told him what happened. Mateo told her to meet him in court the next day. She met Mateo in court. They went home together. She later experienced vaginal itching and Mateo told her to go to the hospital with his friend Yolanda. At the hospital, Socorro stated that she spoke to a social worker about the incident.

Socorro testified that once she arrived at the location she met with Respondent Berberian and a second officer who arrived. The second officer was dark-skinned with a defective eye. By all accounts, the second officer fit the description of Respondent Dailey. Evidence from the District Attorney's Office, the Department investigation as well as all of the witnesses who testified at this proceeding aside from Socorro established that Respondent Dailey was never in the presence of Socorro. He was never at the location where she was stopped on 29 Street and Lexington Avenue or at the laundromat. Thus Socorro lied about the description of the second officer. But the lie was not a simple error. She gave a detailed description of someone who could only be Respondent Dailey. He was the only African-American male on the field team and Respondent Dailey testified that he had a weak muscle in one of his eyes. The Court is left to wonder why Socorro would fabricate the presence of Respondent Dailey at the scene when by all accounts, she had not even seen him.

Given the fact that Socorro lied about the presence of Respondent Dailey at the scene, which clearly was not the fact, the Court had to wonder if any of her other testimony was credible. She testified that although she spoke broken English, she was able to understand what Respondent Berberian wanted her to do. Yet she never testified that Respondent Berberian uttered any words to her other than to lift her blouse and pull

down her pants. She never testified, for example, that he made any verbal sexual remarks to her. She also never testified about what Respondent Berberian wanted her to do when she was on the street and he moved her toward the phone booth. Respondent Berberian testified that on the street he asked her to empty her pockets and she refused stating that people were looking. Socorro only testified that Respondent Berberian only moved her toward the phone booth without an utterance and she responded, "Don't grab me everyone is looking." Socorro's version of this event that Respondent Berberian was getting physical with her on the street for no reason is speculative at best.

Socorro also testified that once she was taken to the bathroom, Respondent Berberian shut the door, yet she said the other officer stood outside of the door. If the door was shut, how would she know where the other officer was located? Respondent Berberian testified that he left the door five to six inches open as he spoke with Socorro. Licato testified that the door was open a few inches and he could see Respondent Berberian shrug his shoulders and yell at Socorro, who was not compliant to his request to empty her pockets. Respondent Berberian and Licato's account seem plausible. Moreover, if Socorro felt the officer was outside the door, why not scream or make a scene. The laundromat owner also testified that the laundromat was crowded at the time Respondent Berberian came in with a female. Some type of reaction from Socorro would have prompted a public response. It seems improbable that Respondent Berberian would choose the bathroom of a crowded laundromat to physically assault Socorro.

Respondent Berberian testified that to further his investigation of Mateo, he used a ruse, telling Socorro that Mateo dropped his cell phone while running from the police, to see her reaction. He stated rather than show concern for Mateo, Socorro stated that

she needed to get the cell phone, so Respondent Berberian set up an appointment to meet her.

Respondent Berberian testified that he met Socorro on the street, identified himself as a police officer, and she no longer wanted to talk to him. He took her into a phone booth and asked her to empty her pockets but she said she was embarrassed. He then took her to a laundromat to talk to her, but she kept saying she was embarrassed, so he took her in a bathroom to continue his questioning of her. He stated that he showed his identification upon entering the laundromat. He went to the back and again asked Socorro to empty her pockets. When Socorro continued to express concern about being embarrassed, he took her in the bathroom. He stated that his partner Licato remained outside of the bathroom with the door open approximately five to six inches. Respondent Berberian testified that Socorro then emptied her pockets and she had nothing incriminating. She replaced the items in her pocket and they left the bathroom. He denied washing his hands, touching her breasts or private areas.

Licato testified that he followed behind Respondent Berberian who was driving Mateo's vehicle to the station house. Once they were on their way back to the field team, Respondent Berberian had a cell phone and informed him that it was Mateo's and the phone rang. Respondent Berberian answered the cell phone. He had a discussion about a meeting place. Respondent Berberian informed him that he spoke to Respondent Dailey and they were directed to 29 Street and Lexington Avenue. Licato said they arrived at the location, Respondent Berberian spoke to Socorro but he stood ten feet away and could not hear the conversation. Respondent Berberian and Socorro proceeded to the laundromat and he followed some five to ten feet behind.

Eventually Respondent Berberian took Socorro into the bathroom. Licato said the bathroom door was open a few inches and he remained outside. Respondent Berberian instructed her to empty her pockets and she was not being compliant. He observed Respondent Berberian shrug his shoulders, wave his hands and eventually yell at Socorro because she was not compliant. Licato said the bathroom door opened and both Respondent Berberian and Socorro exited. He explained that Socorro's demeanor did not seem out of the ordinary, but he did not see her face.

After leaving the laundromat, Licato said they called Respondent Dailey to find out where to meet the field team. He was unaware whether Respondent Berberian mentioned that he searched a female. Licato did state, however, that Department policy dictates that the search of a female should be conducted by a female member of the service. He also stated that a UF-250 is required anytime a member of the service "ha[s] contact with a possible subject or anybody and it involves...other than the brief inquiry as far as name, location." Licato acknowledged that he did not prepare a UF-250 for the encounter with Socorro and he received Department charges and ultimately pleaded Guilty.

The Court also reviewed the medical records in evidence (RX E). The alleged sexual assault occurred on October 7, 2006, between 11:00 a.m. and 12:00 p.m. Socorro did not report to Bellevue Hospital until 6:20 p.m. on October 9, 2006, two days after the incident. The initial brief narrative of the assault states that Socorro called her boyfriend, Mateo. The person who answered Mateo's phone identified himself as a taxi driver and stated that he [Mateo] left the phone in his cab. Socorro said in the report that she met the man at 29 Street and Lexington Avenue. He identified himself as a police

officer and asked her if she had drugs. He called for backup and another police officer came and the two of them took her to the back of the laundromat and both started to "feel me up and put their fingers in my vagina and in my butt. After they were done they let me go."

Later, the medical report states in a Comprehensive Sexual Assault Assessment report that Socorro had a translator who stated that Socorro was sexually assaulted by an undercover police officer. She was tearful, nervous and expressed immigration concerns. Socorro also stated that she was experiencing vaginal pain. The Report also noted that Socorro had consensual sex on October 8, 2006, the day following the incident. It further stated that Socorro had white, vaginal secretions and some swelling to the anal opening but no swelling to the vagina.

During the Social Work Formulation/Clinical Impressions aspect of the report, the medical record notes that Socorro stated that once she met the male, he showed her a badge and told her she was under arrest. He escorted her to a laundromat bathroom where he told her that he had to search her for drugs. He told her that she had to take off all of her clothes. She stated that she was scared and did what she was told to do. He then inserted a finger into her vagina and rectum. While the Court understands that Socorro used a translator at the hospital, a person identified as a "family friend" named Yolanda Vasquez and that some of her statements could have been lost in the translation, i.e., that there was reference to "them" assaulting her when it was only one person that she alleged; there are still inconsistencies in the medical reports. At one point the report states that she was touched without removing her clothes. At another point she said the officer told her that he had to search for drugs and therefore she had to remove all of her

clothes and then he proceeded to sexually assault her in the vagina and anus with his fingers.

However at trial, Socorro swore or affirmed under oath to an account that was in stark contrast. She gave a statement where she did not remove her clothes but lifted her shirt and pulled down her pants. She testified that she was told to raise her blouse and her breasts were touched twice. There is no mention of this breast touching at all in any of the medical reports from the hospital, two days after the alleged incident. There is no mention of the breast touching as she goes through the rape victim process. There is no mention of the breast touching in the initial brief narrative, the Comprehensive Sexual Assault Assessment Report or in the Social Work Formulation/Clinical Impressions Report. Socorro then stated at trial that she was told to pull down her pants where the Respondent inserted his fingers into her vagina three times, her anus twice, and as she attempted to pull her pants back up, he rubbed her clitoris. This detail of having her clitoris rubbed was recalled at trial, but was not stated during the medical evaluation at Bellevue Hospital two days after the alleged sexual assault.

Socorro gave a detailed description of her physical assault, but made no mention of any words exchanged between her and Respondent Berberian in the bathroom. She said on the street he initially identified himself as a taxi driver and later as a police officer and asked her if she had drugs. But no such discussion took place in the bathroom. This Court believes that Socorro was coached into making this allegation by Mateo, who she spoke with the night of the incident, while he was still incarcerated and saw the day following the incident. She even admitted during her visit to Bellevue two days after the alleged sexual assault that she had consensual sex the day after the incident with

someone. There was no other person who could have given her the physical description of Respondent Dailey, the narcotics team supervisor who she had no contact with whatsoever, because he was at another location with the narcotics field team. Only her boyfriend Mateo, who was arrested for drug possession in the presence of Respondent Dailey, could have cajoled her into making this complaint. And if she did, in fact, have consensual sex with Mateo or anyone else on October 8, 2006 [the day following the alleged incident], that act could account for any physical conditions noted in her private area in the medical examination conducted at Bellevue on October 9, 2006. I find the testimony of Socorro to be contrived and not worthy of belief.

Moreover, by Mateo convincing Socorro to fabricate the presence of Respondent Dailey at the laundromat, he obtained the result he wanted. Tainting the evidence against him such that the arresting officer's credibility is in question and the criminal case against him would be disposed of.

Some indicia of Socorro's fabrication is contained in the notes prepared by Social Worker Barcia, who interviewed Socorro and prepared a report (RX I). Barcia stated that she learned from Socorro that her criminal case was not going forward and that there would be no arrest of the police officer who sexually assaulted her. Barcia noted that she called Michael Dougherty, a supervising Assistant District Attorney. He informed her that Socorro admitted to lying about one of the officers involved in the case. She described a male black officer outside of the bathroom when she was being assaulted. The investigation revealed, however that the officer who fit that description was very far from the incident location. Dougherty stated that Socorro's boyfriend [Mateo] told her to lie and accuse his arresting officer. In addition, there was insufficient

evidence that an assault took place in the bathroom. As a result, the investigation was closed without an arrest being made.

Although Dougherty testified at this proceeding that he had no idea where a social worker would get such an account; when asked what was the basis for not proceeding criminally against Respondent Berberian, he stated that Respondent Berberian was never arrested because the case against him could not be proven beyond a reasonable doubt. The first factor was that the Crime Scene Unit was sent to the bathroom and found no physical evidence. The second factor was Socorro's credibility stemming from her identification of Respondent Dailey. Even after Socorro was informed that Respondent Dailey could not have been at the laundromat, she never wavered and was adamant that he was there. The third factor was that Socorro never told the District Attorney's Office that her first contact with Mateo, after his arrest took place, was over the telephone while he was still in custody. The fourth factor was that for the case to be successful it would have to be proven that Respondent Berberian's touching of Socorro was for sexual gratification and not an unauthorized search and Dougherty felt it would not be possible to prove this element of the crime.

Accordingly, based on the totality of the circumstances I find Respondent Berberian Not Guilty of Specification Nos. 1 and 2.

Specification No. 3

Respondent Berberian is charged herein that while on duty and acting in concert with another Member of the Service on or about October 7, 2006, did restrain a person known to this Department, to wit, Respondent Berberian did prevent said person known

to this Department from leaving a laundromat bathroom. Respondent Berberian is found Guilty. Socorro testified and Respondent Berberian acknowledged that he identified himself as a police officer to Socorro. He walked her to the laundromat and both he and Socorro admitted that he showed his badge to someone in the laundromat and proceeded to take Socorro to the bathroom. Socorro testified that once she and Respondent Berberian entered the bathroom the door was closed. Respondent Berberian stated that he closed the door so that only five to six inches of the door was left open. It is clear from this action of Respondent Berberian that Socorro was in police custody and not free to leave the laundromat bathroom.

Once in police custody, Socorro was, in fact, detained or restrained. Moreover, Respondent Berberian offered no viable explanation as to why he needed to hold Socorro in the laundromat. The act of having her empty her pockets without conducting any real investigation is not a legal basis to detain her. He did not testify that he questioned her at length regarding her relationship to Mateo and any other information he could have ascertained about Mateo's drug dealing. As will be discussed in the search aspects of Specification No. 4, the Respondent had no basis to conduct a search of Socorro, and thus no basis to detain her in the laundromat and laundromat bathroom.

Accordingly, I find Respondent Berberian Guilty of Specification No. 3.

Specification No. 4

Respondent Berberian is charged herein that while on duty and acting in concert with another Member of the Service on or about October 7, 2006, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to

wit, Respondent Berberian did conduct an unlawful search of a person known to this Department. The Respondent is found Guilty.

Evidence adduced at trial established that Respondent Berberian decided to further his investigation once he had Mateo's cell phone. He made arrangements to meet Mateo's girlfriend Socorro. Once he met her, the Respondent had a right to stop, question and even frisk her for his safety, even though she was a female, but he did not do that. The Respondent did not testify that he asked Socorro questions about Mateo and if she knew anything about his drug dealing. The Respondent testified that he did not touch Socorro. Instead, the Respondent testified that he demanded that Socorro empty her pockets on the streets. The Respondent had no basis for this order. He did not suspect her of drug possession. And even if he did, that is not a lawful basis to have her empty her pockets on the street. Because the Respondent did not have a lawful basis to have Socorro empty her pockets on the streets, he certainly did not have a legal basis to detain her and take her to a laundromat bathroom and order her to empty her pockets there either. Thus Respondent Berberian's action amounted to an unlawful search.

Accordingly, I find Respondent Berberian Guilty of Specification No. 4.

Specification No. 5

Respondent Berberian is charged herein that while on duty on or about October 7, 2006 he did fail and neglect to perform said officer's duties, to wit, Respondent Berberian did conduct an unlawful search of a female known to this Department in that said officer failed to ensure that a female Member of the Service was present during said search as directed by competent authority. The Respondent is found Not Guilty as charged.

Evidence adduced at trial established that the Respondent stopped Socorro and ordered her to empty her pockets on the streets. He then took her to a laundromat bathroom and made the same request. The Court has already established that this conduct amounted to an unlawful search. However, this type of search, ordering the emptying of pockets, did not require the presence of a female member of the service. This Court has already determined that the Respondent had a right to stop, question and if needed, frisk Socorro for his safety to ensure that she did not have a weapon that could harm either him or his partner Licato without calling a female member of the service to the scene. Although the search was unlawful, it was not the type of search which required the presence of a female officer.

Accordingly, I find Respondent Berberian Not Guilty of Specification No. 5.

Specification No. 6

Respondent Berberian is charged with failing and neglecting to perform his duties on or about October 7, 2006, to wit, failing to prepare a UF-250 following a search of a female known to the Department. Respondent Berberian is found Guilty. Respondent Berberian performed an unlawful search of Socorro by taking her into a laundromat bathroom and ordering her to empty her pockets. Once he made the arrangement to meet Socorro, identified himself as a member of the service and stopped and questioned her, he had a duty to prepare a Stop, Question and Frisk Report (UF-250). Failure to prepare such a report, particularly in a case such as this, creates an atmosphere where sexual assault allegations can be lodged.

Accordingly, I find Respondent Berberian Guilty of Specification No. 6.

Specification No. 7

Respondent Berberian is charged herein that on or about and between January 31, 2007 and April 2, 2007, at a location known to the Department did wrongfully and without just cause prevent or interfere with an official Department investigation, to wit, said officer made misleading statements and failed to immediately clarify said statements during an interview conducted by prosecutors at the New York County District Attorney's Office wherein said officer stated that he searched an individual known to this Department in the rear of the laundromat when said search took place inside the bathroom of the laundromat. Respondent Berberian is found Guilty as charged.

Shull, an Assistant District Attorney with the New York District Attorney's Office testified that he investigated the complaint of Socorro. On January 31, 2007, he conducted an interview of Respondent Berberian, who had an attorney. During the first interview that date, Respondent Berberian described his encounter with Socorro. He stated that they met on the street and that she asked to go into the laundromat because she was embarrassed. Respondent Berberian then told him that they went to the back of the laundromat and he asked her to empty her pockets. He said that she did on either a washing machine or dryer in the back of the laundromat.

Shull stated that he spoke to the entire field team on that date and decided to have a second interview with Respondent Berberian and Licato that day because their stories were similar but not the same, and differed from where Socorro said the incident took place. He explained that at the first interview, he allowed the officers to speak, but at the second interview, he would have specific questions which included why they answered

the phone and why they went to the laundromat. Shull testified that he interviewed Respondent Berberian and Licato a second time separately but he asked both of them specifically whether they had been in the bathroom and they both answered no.

Shull said that sometime after the second interview he was contacted by Licato who stated that he wanted to clear up the record. Licato came in for an interview on March 23, 2007 and stated that Respondent Berberian had gone into the laundromat and then into the bathroom located at the back of the laundromat. The door was closed slightly but he [Licato] could still see inside. Following the interview with Licato, Shull said he reached out to Respondent Berberian's attorney and asked if he wanted to make an additional statement.

Shull said that Respondent Berberian came in early April and he was interviewed again. He said that he searched Socorro not in the back of the laundromat but in the bathroom. Respondent Berberian told him that she asked to go in the bathroom because people were looking through the window and it was making her embarrassed.

It is clear from the responses that Respondent Berberian gave in both interviews held on January 31, 2007 that he gave misleading statements to the District Attorney's Office. He initially said that Socorro's pockets were emptied either on a washing machine or a dryer which was clearly not the case. He further stated in the second interview that date that he did not go into the bathroom with Socorro. He later recanted this statement in April and said that he searched Socorro in the bathroom. One of the problems with the statement made in April is Respondent Berberian only came clean after Licato disclosed the lie to the District Attorney's Office.

Accordingly, I find Respondent Berberian Guilty of Specification No. 7.

Specification No. 8

Respondent Berberian is charged with while on duty on or about October 7, 2006, with intent to obtain a benefit or deprive another person of benefit, said officer commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized, to wit, subjected a person known to this Department to sexual contact without the latter's consent in that said officer inserted his fingers into the vagina and anus and touched the breast area of said person known to this Department. Respondent Berberian is found Not Guilty.

As stated in Specification No.1 where the Respondent was found Not Guilty of sexual contact by forcible compulsion, Socorro was found to be an incredible witness. She lied about seeing Respondent Dailey at the laundromat. She told her therapist that Mateo told her to lie about Respondent Dailey. In addition, she gave different accounts of the incident at different times. She made no mention of being touched in the breast area or having her clitoris rubbed when she reported to Bellevue Hospital for treatment two days after the incident.

The Court also found that Socorro was coached. She met with Mateo the night of the incident and she also noted that she had consensual sex with someone the day following the incident during her visit to Bellevue Hospital two days after the incident. A review of Socorro's cell phone records (RX B) indicate that she made five calls to Mateo's cell phone between 12:16 p.m. and 12:24 p.m. that day. Following that, two calls were made to Socorro's mother's house in the Dominican Republic at 12:34 p.m. and 4:14 p.m. And three calls were made to Del Carmen in Lowell, Massachusetts at

1:20 p.m., 3:14 p.m., and 5:13 p.m. Two calls were also made to Socorro's cell phone at 3:02 p.m. and 3:03 p.m.

In addition, Socorro testified that she believed Mateo got a new cell phone following the incident. A review of the phone records listed under Mateo's name (RX D) shows two phone calls to Socorro's mother, one on October 9, 2006 at 5:08 p.m., and another at 8:11 a.m. on October 10, 2006. It also shows three calls to Del Carmen on October 8, 2006 at 12:22 a.m., 2:31 p.m., and 3:29 p.m. It is conceivable that Mateo was able to influence these people also with respect to the incident. Based on the lack of credibility of the Department's key witness on the issue, the Department was unable to meet its burden as to this Specification by a preponderance of the credible evidence.

Accordingly, I find Respondent Berberian Not Guilty of Specification No. 8.

PENALTY

In order to determine an appropriate penalty, the Respondents' service records were examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent Dailey was appointed to the Department on April 30, 1991. Respondent Berberian was appointed to the Department on July 1, 1998. Information from their personnel folders that was considered in making the penalty recommendations is contained in the attached confidential memoranda.

Respondent Dailey has been found Guilty of failing to make proper inquiries of Respondent Berberian relating to an ongoing narcotics investigation and failing to ensure that a UF-250 was prepared. Following a narcotics operation, Respondent Berberian informed Respondent Dailey that he was going to do some follow-up investigation

related to the narcotics arrest that was just made. He later told Respondent Dailey that the investigation was negative. Respondent Dailey never followed up by making any inquiries as to what type of investigation Respondent Berberian conducted. The end result was that Socorro was stopped, taken into a laundromat bathroom and illegally searched and no Stop, Question and Frisk Report (UF-250) was ever prepared.

In Disciplinary Case No. 80029/04 and 80030/04, an 18-year sergeant with no prior disciplinary record forfeited five vacation days for failing to prepare a UF-250, neglecting to make a Command Log entry of a strip search, and abusing his authority by supervising the unlawful search of two individuals.

Based on Respondent Dailey's service record, I recommend that he forfeit five vacation days.

Respondent Berberian has been found Guilty of several violations of the Patrol Guide. He has been found Guilty of preventing Socorro from leaving the laundromat bathroom, conducting an unlawful search of her, and failing to prepare a Stop, Question and Frisk Report following the stop. Respondent Berberian has also been found Guilty of making misleading statements on January 31, 2007 and April 2, 2007 during interviews conducted by prosecutors at the New York County District Attorney's Office. The Charges and Specifications Respondent Berberian has been found Guilty of are very serious charges. They reflect instances where he abused his authority as a New York City Police Detective. Respondent Berberian used his police detective shield to gain access to the laundromat. He showed his detective shield to Socorro and the laundromat owner. Socorro understood the authority of the police and knew she was not free to leave. Using his position as a police detective, he carried out his illegal search of

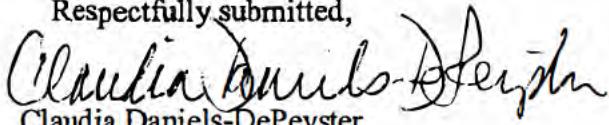
Socorro in an incomprehensible fashion in a laundromat bathroom. This abhorrent action exposed the Department to the type of sexual complaint lodged by Socorro. After making Socorro empty her pockets in the bathroom, which Respondent Berberian had no legal basis to do, he also failed to prepare a Stop, Question and Frisk Report to detail the rationale for the stop. Then he told his supervisor Respondent Dailey that his investigation was negative.

Another serious offense Respondent Berberian has been found Guilty of is giving misleading statements to the District Attorney's Office. During two interviews on January 31, 2007, Respondent Berberian gave false information to the District Attorney's Office. He concocted a story that he had Socorro empty her pockets on either a washing machine or dryer inside the laundromat. At the second interview on that date, when specifically asked whether he went into the bathroom with Socorro, he replied no. During the interview held on April 2, 2007, Respondent Berberian only came clean after Licato disclosed the truth and he added that Socorro asked to go into the bathroom at the laundromat, which was not the case.

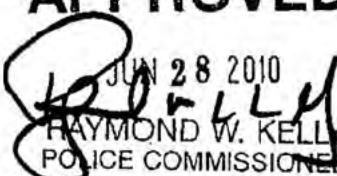
Respondent Berberian was dishonest during three official interviews with the New York County District Attorney's Office, on a matter of importance. Additionally, his dishonesty led to the dismissal of the underlying criminal case against Mateo. Shull testified that Mateo's case was ultimately dismissed because the District Attorney's Office did not want the officers to testify in the event that there was an improper search.

Based on the serious nature of the offenses Respondent Berberian has been found Guilty of, coupled with his lack of truthfulness when giving statements to the District

Attorney's Office, I recommend that Respondent Berberian be DISMISSED from his position as a New York City Police Department Detective.

Respectfully submitted,

Claudia Daniels-DePeyster
Assistant Deputy Commissioner-Trials

APPROVED


JUN 28 2010
RAYMOND W. KELLY
POLICE COMMISSIONER
AS TO SGT. COREY DAILEY



 AS TO DET. JOHN BERBERIAN

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
SERGEANT COREY DAILEY
TAX REGISTRY NO. 913758
DISCIPLINARY CASE NO. 83551/07

Respondent Dailey was rated 4.5 "Above Highly Competent" in his last three annual performance evaluations for 2006, 2007 and 2008, respectively. Respondent Dailey has received 20 Excellent Police Duty medals and nine Meritorious Police Duty Medals in his career.

[REDACTED]

Respondent Dailey has no prior, formal disciplinary record.

For your consideration.



Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

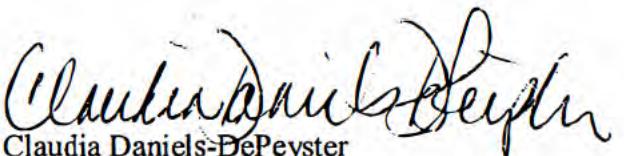
From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE JOHN BERBERIAN
TAX REGISTRY NO. 921146
DISCIPLINARY CASE NO. 83488/07

Respondent Berberian was rated 3.5 "Above Competent" in his 2004 annual performance evaluation and 4.0 "Highly Competent" in his 2007 annual performance evaluation. Respondent Berberian has received 35 Excellent Police Duty medals and 15 Meritorious Police Duty Medals in his career.

[REDACTED]
for failing to notify his Commanding Officer or IAB when becoming aware of an allegation of corruption or serious misconduct involving a member of the service. On February 9, 2004 Respondent Berberian pleaded Guilty and received a penalty of the forfeiture of ten vacation days.

On April 4, 2007, Respondent Berberian was placed in Level II Discipline Monitoring based on his overall record.

For your consideration.



Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials